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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 107 (SDA)

5 JOEL H. MINGO LAMAR,

6 Defendant.

7 -----x
8 February 22, 2018
9 12:15 p.m.

10 Before:

11 HON. STEWART D. AARON

12 Magistrate Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 Interim United States Attorney for the
16 Southern District of New York

ALISON G. MOE

16 Assistant United States Attorney

17 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

18 IAN H. MARCUS AMELKIN

19
20 Also present: DAVID MINTZ, Interpreter (Spanish)

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(Case called)

THE DEPUTY CLERK: Counsel, please state your appearances for the record.

MS. MOE: Good afternoon, your Honor. Alison Moe for the government.

THE COURT: Good afternoon.

MR. MARCUS AMELKIN: Good afternoon, your Honor. Thank you for seeing us on short motion. Ian Marcus Amelkin of the Federal Defenders of New York on behalf of Mr. Mingo Lamar.

THE COURT: Good afternoon.

Please be seated.

So we are here this afternoon on the matter United States against Joel H. Mingo Lamar, 18 Cr. 107.

Mr. Lamar, you have appeared before me before. I am Magistrate Judge Aaron. And I understand that we are here today because Mr. Lamar wishes to enter a plea with respect to the charges alleged against him in Count One of the information. Is that correct?

MR. MARCUS AMELKIN: Yes, your Honor.

THE COURT: I am going to ask my law clerk to swear in the defendant.

(Defendant sworn)

THE COURT: Mr. Lamar, the purpose of this proceeding is to make sure that you understand your rights, to decide whether you are pleading guilty of your own free will, and to

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1 make sure you are pleading guilty because you are guilty and
2 not for some other reason.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: I am now going to ask you certain
6 questions. It's very important that you answer these questions
7 honestly and completely. If you don't understand any of the
8 questions, or if you want any time to consult with your lawyer,
9 please say so because it is important that you understand every
10 question before you answer.

11 What is your full name?

12 THE DEFENDANT: Joel Hilario Mingo Lamar.

13 THE COURT: How old are you?

14 THE DEFENDANT: 35.

15 THE COURT: What language or languages do you speak?

16 THE DEFENDANT: Spanish.

17 THE COURT: Can you read and write in Spanish?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: What was the highest grade in school that
20 you completed?

21 THE DEFENDANT: First year of secondary school.

22 THE COURT: Are you currently or have you recently
23 been under the care of a doctor or a mental health professional
24 for any reason?

25 THE DEFENDANT: No.

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1 THE COURT: Are you under the influence of any drug or
2 alcohol today?

3 THE DEFENDANT: No.

4 THE COURT: How are you feeling physically today?

5 THE DEFENDANT: OK.

6 THE COURT: Have you had sufficient time to discuss
7 the charges against you and your plea with your attorney, Mr.
8 Amelkin?

9 THE DEFENDANT: Not today.

10 THE COURT: OK. Have you had sufficient time prior to
11 today to discuss the charges against you and a plea that you
12 are going to be making here today?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you been satisfied with the advice
15 and counsel that Mr. Amelkin has provided to you?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you ready to enter a plea today?

18 THE DEFENDANT: Yes.

19 THE COURT: Does either counsel have any objections to
20 the defendant's competence to plead at this time?

21 MS. MOE: No, your Honor. However, we would
22 respectfully request that the Court inquire of the defendant
23 whether he understands the interpreter, and advise him that if
24 he doesn't understand anything that is being translated to him,
25 to alert the Court.

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1 In addition, perhaps the Court could inquire whether
2 the charging instrument, the information in this case has been
3 translated to him in Spanish.

4 Thank you, your Honor.

5 THE COURT: Are you having any difficulty
6 understanding the translator?

7 THE DEFENDANT: No.

8 THE COURT: If you do have difficulties, would you
9 please let me know?

10 THE DEFENDANT: OK.

11 THE COURT: When you appeared before me last, we had
12 looked at the information, which was the charging instrument
13 that was used to assert charges against you.

14 Do you recall that?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you had an opportunity to review that
17 document with your lawyer?

18 THE DEFENDANT: No. Oh, yes.

19 THE COURT: Just to be clear, I am going to hand my
20 law clerk the document entitled misdemeanor information.

21 Mr. Amelkin has one. So you have before you the
22 misdemeanor information.

23 Was that document translated for you, Mr. Lamar?

24 THE DEFENDANT: The misdemeanor, yes.

25 THE COURT: Are there any other questions that the

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1 government would like me to ask the defendant?

2 MS. MOE: No, your Honor. Thank you very much.

3 THE COURT: Mr. Lamar, in order to determine whether
4 your plea is voluntary and made with a full understanding of
5 the charges against you and the consequences of your plea, I am
6 going to make certain statements to you and I am going to ask
7 you certain questions. I want you to understand that I need
8 not accept your plea unless I am satisfied that you are in fact
9 guilty and that you understand your rights.

10 Now, Count One of the information that we just took a
11 look at contains a single count that charges you with bank
12 larceny, in violation of Title 18, United States Code, Section
13 2113B, and carries a maximum term of imprisonment of one year,
14 a maximum term of supervised release of one year, a maximum
15 fine of \$100,000, and a \$25 mandatory special assessment.

16 Do you understand that that is the crime to which you
17 are pleading and the maximum penalties applicable to that
18 crime?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that the total maximum
21 sentence of imprisonment on Count One is one year?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that the total maximum
24 term of supervised release on Count One is one year?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that under your plea
2 agreement, you agree to pay restitution in an amount that the
3 court specifies, and that the obligation to make such
4 restitution shall be made a condition of probation or of
5 supervised release?

6 THE DEFENDANT: Yes.

7 THE COURT: Finally, I am required by law to tell you
8 that there is a special assessment, or a fine, of \$25 that is
9 required to be imposed.

10 Mr. Lamar, what country are you a citizen of?

11 THE DEFENDANT: Dominican Republic.

12 THE COURT: Do you understand that if you are not a
13 citizen of the United States, your guilty plea and conviction
14 make it very likely that your deportation from the United
15 States is presumptively mandatory and that, at a minimum, you
16 are at risk of being deported or suffering other adverse
17 immigration consequences?

18 THE DEFENDANT: Yes.

19 THE COURT: If that does happen, you will still be
20 bound by your guilty plea, that is, you will not be able to
21 withdraw it, regardless of any advice you have received from
22 your counsel or others regarding the immigration consequences
23 of your plea.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand the charges against you
2 and the consequences of pleading guilty?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that in consideration of
5 your plea, you will not be further criminally prosecuted by the
6 United States attorney's office for bank fraud as charged in
7 the information, it being understood that your plea does not
8 bar the use of such conduct as a predicate act or as a basis
9 for a sentencing enhancement in a subsequent prosecution?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that the United States
12 attorney cannot make any promises to you concerning criminal
13 tax violations?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you have the right
16 to plead not guilty and the right to a trial on the charges
17 against you and, in fact, a trial by jury?

18 THE DEFENDANT: Yes.

19 THE COURT: Now I am going to ask the assistant United
20 States attorney to state the elements of the crime charged.
21 Just so you understand, the elements are the things that the
22 government would have to prove beyond a reasonable doubt if you
23 went to trial.

24 MS. MOE: Your Honor, Count One of the misdemeanor
25 information charges the defendant with bank larceny.

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1 The elements of those crimes are as follows:

2 First, that the defendant took and carried away money,
3 property, or a thing of value belonging to or in the care,
4 custody, control, management, or possession of a bank, credit
5 union, or insured savings and loan association;

6 Second, that at the time the bank, credit union, or
7 insured savings and loan association had its deposits insured
8 by the Federal Deposit Insurance Corporation; and

9 Third, that the defendant took and carried away such
10 money, property, or thing of value with the intent to steal.

11 In addition to those elements, which the government
12 would be required to prove beyond a reasonable doubt, the
13 government would be required to prove that venue in this
14 district is proper by a preponderance of the evidence.

15 THE COURT: Mr. Lamar, do you understand that if you
16 pled not guilty and went to trial, the burden would be on the
17 government to prove each and every element of the crime
18 charged, except for that last piece, beyond a reasonable doubt
19 in order to convict you?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that you would have the
22 right to be represented by an attorney at all stages of the
23 proceeding, and if necessary, an attorney would be appointed
24 for you?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that at trial, you would
2 have the right to confront and cross-examine witnesses against
3 you and the right not to be compelled to incriminate yourself?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that at trial, you would
6 be presumed innocent until such time, if ever, the government
7 established your guilt by competent evidence to the
8 satisfaction of the trier of fact beyond a reasonable doubt?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that at trial, you would
11 have the right to testify and would also be entitled to
12 compulsory process, in other words, the right to call other
13 witnesses on your behalf?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if your plea is
16 accepted, there will be no further trial of any kind, so that
17 by pleading guilty you are waiving your right to trial?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that if you are
20 sentenced to a period of supervised release, and if you violate
21 the terms of your supervised release, an additional period of
22 jail time may be imposed without credit for the time you had
23 previously spent on supervised release?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that any statements you

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1 make here today under oath may be used against you in a
2 prosecution for perjury or for making false statements?

3 THE DEFENDANT: Yes.

4 THE COURT: Failing to tell the truth today in this
5 proceeding is a crime.

6 Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: The Court has been provided a signed copy
9 of the plea agreement. It's a letter that bears the date
10 January 23, 2018, but on the fifth page it is signed by
11 Mr. Mingo Lamar today and approved by his lawyer, Mr. Amelkin.

12 Mr. Lamar, did you sign the plea agreement here this
13 afternoon?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you have the agreement translated for
16 you before you had signed it?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you discuss the plea agreement with
19 your attorney?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, putting the plea agreement to one
22 side, separate and apart from the plea agreement, have any
23 threats or promises been made to you to make you plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: Has anyone forced you to plead guilty?

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1 THE DEFENDANT: No.

2 THE COURT: Separate and apart from the plea
3 agreement, have any understandings or promises been made to you
4 concerning the sentence that you will receive?

5 THE DEFENDANT: No.

6 THE COURT: Is your plea voluntary, in other words, of
7 your own free will?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now I am going to review some portions of
10 the agreement with you. The plea agreement says that you and
11 the government have reached agreement regarding the appropriate
12 calculation of your sentence under a part of our law known as
13 the sentencing guidelines, and that the stipulated guideline
14 sentencing range is from zero to six months' imprisonment.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And the letter also states that you and
18 the government have agreed that the applicable fine range is
19 \$1,000 to \$9,500.

20 Do you understand that?

21 THE INTERPRETER: The upper limit of the fine for the
22 interpreter's sake?

23 THE COURT: 9,500.

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that neither the

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1 probation office nor the court is bound by the guideline
2 stipulations and that the sentence to be imposed upon you is
3 determined solely by the court?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: In imposing its sentence upon you, the
6 court is obligated to calculate the applicable sentencing
7 guideline range in determining a sentence range, including
8 other sentencing factors that are set forth in Title 18 of the
9 United States Code, Section 3553(a).

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that you have agreed not
13 to file a direct appeal or otherwise challenge your conviction
14 or sentence if you are sentenced within or below the stipulated
15 guidelines range?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that you also have
18 agreed to waive your right to appeal any term of supervised
19 release that is less than or equal to the statutory maximum?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you understand that you also have
22 agreed to waive your right to appeal any fine that is less than
23 or equal to \$9,500?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And are you pleading guilty because you

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1 are in fact guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that the plea agreement
4 does not bind any prosecuting office other than the United
5 States Attorney's Office for the Southern District of New York?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that apart from any
8 proffer agreements you may have entered into with the
9 government, this plea agreement takes the place of any prior
10 understanding you may have had with the government, and that
11 this plea agreement cannot be modified, except in a writing
12 signed by all parties?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that if your conviction
15 following your plea of guilty is vacated for any reason, then
16 the government is not time barred, and that if the cause of
17 action is not time barred as of the date you signed the
18 agreement, the government can reinstate its prosecution against
19 you?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Lamar, did you commit the offense to
22 which you are pleading?

23 THE DEFENDANT: Yes.

24 THE COURT: Please tell me in your own words what you
25 did.

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1 THE DEFENDANT: In 2016, I deposited some checks that
2 didn't belong to me. I am sorry. In New York.

3 THE COURT: Did you undertake those acts knowing that
4 you were stealing from others?

5 THE DEFENDANT: I knew that the checks did not belong
6 to me.

7 THE COURT: Did you know at the time that the acts
8 that you were doing were wrong and against the law?

9 THE DEFENDANT: Yes.

10 THE COURT: Ms. Moe, are there other questions that
11 you would like me to pose to the defendant?

12 MS. MOE: Thank you, your Honor.

13 Along the lines of the Court's previous question with
14 respect to the intent to steal, that is the third element of
15 this offense, and I don't believe the defendant has allocuted
16 to his intent to steal in depositing these checks.

17 THE COURT: I will pose the question again to you.

18 In undertaking the actions that you did, did you
19 undertake these acts with the intent to steal?

20 THE DEFENDANT: To steal?

21 THE COURT: Yes. That's the question.

22 MR. MARCUS AMELKIN: Just one moment, your Honor.

23 THE COURT: Sure.

24 (Counsel conferred with defendant)

25 THE DEFENDANT: I made the deposits knowing that the

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1 money was not mine and with the intention of keeping some of
2 it.

3 THE COURT: In other words, you were stealing some of
4 it, were you not?

5 THE DEFENDANT: Yes.

6 THE COURT: Ms. Moe, is that satisfactory?

7 MS. MOE: Yes, your Honor. Thank you.

8 In addition, the government would proffer that at the
9 time the defendant did this, he was located in the Bronx, with
10 respect to venue.

11 In addition, the government would proffer that the
12 victim banks were at that time insured by the Federal Deposit
13 Insurance Corporation.

14 MR. MARCUS AMELKIN: We accept both of those proffers.

15 THE COURT: Thank you.

16 MS. MOE: Thank you, your Honor.

17 THE COURT: Mr. Lamar, you may be seated.

18 THE DEFENDANT: Thank you.

19 THE COURT: Mr. Lamar, in light of all of the
20 foregoing, how do you wish to plead?

21 THE DEFENDANT: Guilty.

22 THE COURT: Mr. Amelkin, do you know of any reason why
23 Mr. Lamar ought not plead guilty?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Ms. Moe, does the government have any

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1 other questions it would like the Court to ask Mr. Lamar in
2 connection with his guilty plea generally?

3 MS. MOE: Just one, your Honor. Thank you.

4 If the Court could just confirm with the defendant
5 that he has been made no promises, apart from what is written
6 in the plea agreement, and that nothing has been left out, the
7 government would greatly appreciate it.

8 THE COURT: I thought I covered that.

9 Am I correct, Mr. Lamar, that no promises have been
10 made to you other than those contained in the plea agreement?

11 THE DEFENDANT: No.

12 THE COURT: Let me pose the question a different way.

13 Were any promises made to you other than those
14 contained in the plea agreement?

15 THE DEFENDANT: No.

16 MS. MOE: Thank you, your Honor.

17 THE COURT: Mr. Lamar, the Court is satisfied that you
18 understand the nature of the charges against you and the
19 consequences of your plea. The Court is also satisfied that
20 your plea is being made voluntarily and knowingly and that
21 there is a factual basis. Accordingly, I accept your plea of
22 guilty.

23 Mr. Amelkin, I understand your client is waiving the
24 preparation of a presentence report by the probation
25 department.

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1 MR. MARCUS AMELKIN: That's correct, your Honor. And
2 we are prepared to go to sentencing tomorrow at 3:30.

3 THE COURT: We are scheduled for the sentencing
4 tomorrow, here in courtroom 11C, at 3:30 p.m.

5 MS. MOE: Yes, your Honor. Thank you.

6 THE COURT: Is there anything further from either
7 side?

8 MS. MOE: No, your Honor. Nothing from the
9 government.

10 MR. MARCUS AMELKIN: No. Have a good day.

11 THE COURT: We will see you tomorrow.

12 We stand adjourned.

13 (Adjourned)
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